

93A

Robert Sheehan
vs.

K.I.P. Financial, LLC
et al.

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CIVIL TRACKING ORDER (STANDING ORDER 1-88)	DOCKET NUMBER 1872CV00644	Trial Court of Massachusetts The Superior Court 
CASE NAME: Robert Sheehan vs. K.I.P. Financial, LLC et al		Scott W. Nickerson, Clerk of Court Barnstable County
File Copy		COURT NAME & ADDRESS Barnstable County Superior Court 3195 Main Street Barnstable, MA 02630

TRACKING ORDER - A - Average

You are hereby notified that this case is on the track referenced above as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

STAGES OF LITIGATION

DEADLINE


	SERVED BY	FILED BY	HEARD BY
Service of process made and return filed with the Court		02/19/2019	
Response to the complaint filed (also see MRCP 12)		03/21/2019	
All motions under MRCP 12, 19, and 20	03/21/2019	04/22/2019	05/20/2019
All motions under MRCP 15	01/15/2020	02/14/2020	02/14/2020
All discovery requests and depositions served and non-expert depositions completed	11/10/2020		
All motions under MRCP 56	12/10/2020	01/11/2021	
Final pre-trial conference held and/or firm trial date set			05/10/2021
Case shall be resolved and judgment shall issue by			11/22/2021

The final pre-trial deadline is not the scheduled date of the conference. You will be notified of that date at a later time.

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to

DATE ISSUED 11/21/2018	ASSISTANT CLERK Scott W Nickerson	PHONE (508)375-6684
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NOTICE TO ATTORNEY GENERAL OF COMPLAINT ON CHAPTER 93A ACTION		DOCKET NUMBER 1872CV00644	Trial Court of Massachusetts The Superior Court	
CASE NAME: Robert Sheehan vs. K.I.P. Financial, LLC et al		Scott W. Nickerson, Clerk of Court Barnstable County		
Attorney General Consumer Protection Division One Ashburton Place Boston, MA 02108-1698		COURT NAME & ADDRESS Barnstable County Superior Court 3195 Main Street Barnstable, MA 02630		
<p>Pursuant to G.L. c. 93A, § 10, enclosed is a copy of the complaint seeking relief under G.L. c. 93A. The action was filed in this court on 11/21/2018.</p>				
DATE 11/21/2018		CLERK OF COURTS Scott W. Nickerson, Clerk of Court		

Date/Time Printed: 11-21-2018 14:47:23

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CIVIL ACTION COVER SHEET	DOCKET NUMBER <u>18720V644</u>	Trial Court of Massachusetts The Superior Court
PLAINTIFF(S): <u>Robert Sheehan</u> ADDRESS: <u>3 Heathers Way, Provincetown, MA 02657</u>	COUNTY: <u>Barnstable</u>	
DEFENDANT(S): <u>K.I.P. Financial, LLC, Joseph DeMartino, and Coldwell Banker Pat Schultz Real Estate</u>		
ATTORNEY: <u>Jennifer L. Sylvia, Esq.</u> ADDRESS: <u>Moses Ryan, Ltd, 180 Westminster Street, Suite 400, Providence, RI 02903</u>	ADDRESS: <u>K.I.P. Financial, LLC, 390 Waterfall Lane, Winter Park, FL 32789</u> <u>Joseph DeMartino, 406 Commercial Street, Provincetown, MA 02657</u> <u>Coldwell Banker Pat Schultz Real Estate, 406 Commercial Street, Provincetown, MA 02657</u>	
675651		

TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)

CODE NO. E06	TYPE OF ACTION (specify) <u>Mass Antitrust Act, G. L. c93 Sec. 9</u>	TRACK <u>A</u>	HAS A JURY CLAIM BEEN MADE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
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Plaintiff please describe:

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

Following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff counsel relies to determine money damages. For each claim, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS
(attach additional sheets as necessary)

Documented medical expenses to date:

1. Total hospital expenses	\$	
2. Total doctor expenses	\$	
3. Total chiropractic expenses	\$	
4. Total physical therapy expenses	\$	
5. Total other expenses (describe below)	\$	
Subtotal (A):		\$

Documented lost wages and compensation to date	\$	
Documented property damages to date	\$	
Reasonably anticipated future medical and hospital expenses	\$	
Reasonably anticipated lost wages	\$	
Documented items of damages (describe below)	\$	30,000.00

Net cost and fees expunged related to easement to cure property defect.

Please describe plaintiff's injury, including the nature and extent of injury:

TOTAL (A-F):\$ 30,000.00

CONTRACT CLAIMS
(attach additional sheets as necessary)

Please provide a detailed description of claim(s):

TOTAL: \$ _____

Signature of Attorney/Pro Se Plaintiff: X

Date: 11/20/18

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

CERTIFICATION PURSUANT TO SJC RULE 1:18

I certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the benefits and disadvantages of the various methods of dispute resolution.

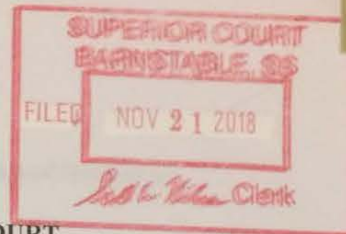
Signature of Attorney of Record: X

Date: 11/30/18

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPERIOR COURT



ROBERT SHEEHAN
Plaintiff,

v.

K.I.P. FINANCIAL, LLC,
JOSEPH DEMARTINO, COLDWELL
BANKER PAT SCHULTZ REAL
ESTATE
Defendants.

CIVIL ACTION NO. 1872CV644

COMPLAINT AND JURY DEMAND

PRELIMINARY STATEMENT

1. This is an action by a buyer of real property in Provincetown, who sustained significant damages as a direct and proximate result of the intentional, fraudulent, and wrongful conduct of the seller and broker in misrepresenting and concealing, before the sale, their knowledge of the fact that sub-surface, structural elements of a retaining wall on the property called "tiebacks" encroached onto an abutting parcel.

PARTIES

2. The Plaintiff buyer, Robert Sheehan, ("Sheehan") is an individual residing in Fort Lauderdale, Florida.
3. The Defendant seller, K.I.P. Financial, LLC, ("KIP"), is a Florida limited liability company registered to do business in Massachusetts with a principal place of business in Winter Park, Florida. At all times material to this action, KIP owned and sold to Sheehan real property located at 3 Heather's Way in Provincetown, Massachusetts ("Property"). KIP's knowledge, actions, representations, and conduct (by and through its agents and

representatives) in connection with the sale of the Property form the basis of Sheehan's claims against KIP.

4. The Defendant broker, Joseph DeMartino ("DeMartino"), is a licensed Massachusetts realtor with a principal place of business in Provincetown, Massachusetts. At all material times, DeMartino acted as a real estate agent for both seller and buyer of the Property. DeMartino's knowledge, actions, representations, and conduct in connection with his dual-agency sale of the Property form the basis of Sheehan's claims against DeMartino and Defendant Coldwell Banker Pat Schultz Real Estate.
5. Defendant Coldwell Banker Pat Schultz Real Estate, ("Coldwell Banker") is a real estate business with a principal place of business located in Provincetown, Massachusetts. At all material times, Defendant DeMartino was an owner, agent, and/or employee of Defendant Coldwell Banker and was acting within the scope of his agency and/or employment.

JURISDICTION AND VENUE

6. The Court has jurisdiction over this action pursuant to M.G.L. ch.212 §3.
7. Venue is proper in Barnstable County pursuant to M.G.L. ch.223 §1.

FACTUAL ALLEGATIONS

8. In 2015, KIP owned a parcel of realty with a residential dwelling at 3 Heather's Way, Provincetown.
9. Among the Property's other improvements at that time was a retaining wall, located close to and running roughly parallel with a driveway along the easterly property line with the abutting property at 1 Heather's Way ("Abutting Property").
10. At all material times, the Abutting Property was owned by HKR Realty Trust and was managed by its trustee, William N. Rogers.

11. In 2015, KIP decided to part with the Property and, for this purpose, engaged DeMartino and Coldwell Banker to list and sell it.
12. Sheehan became interested in buying the Property and, in April 2015, also engaged DeMartino and Coldwell Banker to act on his behalf as a buyer's broker.
13. Sheehan and KIP both consented to the dual-agency representation by DeMartino and Coldwell Banker.
14. In April 2015, Sheehan made an offer to purchase the Property, which offer KIP accepted.
15. In May 2015, Sheehan and KIP executed a purchase and sale agreement for the Property and, subject to its terms and conditions, scheduled a closing for September 2015.
16. Well before the closing, Rogers, trustee for the owner of the Abutting Property, informed DeMartino, KIP's legal counsel, and KIP's manager, James Savko, that subsurface "tiebacks" (stabilizing elements) supporting the Property's retaining wall were encroaching several feet onto the Abutting Property.
17. Notwithstanding their knowledge, as aforesaid, of the encroachment of the tiebacks onto the Abutting Property, DeMartino and Coldwell Banker intentionally and fraudulently chose to conceal from Sheehan their knowledge of the encroachment before Sheehan closed on the purchase of the Property and became its owner.
18. Notwithstanding KIP's knowledge, as aforesaid, of the encroachment, KIP intentionally and fraudulently chose to conceal from Sheehan its knowledge of said encroachment before Sheehan closed on the Property and became its owner.
19. Notwithstanding KIP's knowledge, as aforesaid, of said encroachment, KIP intentionally and fraudulently misrepresented to Sheehan and his agents and representatives in connection with the execution of the seller's documents required for the closing on the

Property that KIP had no knowledge of any encroachment from the Property onto the Abutting Property.

20. In reasonable reliance on the duties owed by, and the advice, recommendations, counsel, and services of DeMartino and Coldwell Banker as his broker, Sheehan, without knowledge of any encroachment from the Property onto the Abutting Property, closed on the purchase of the Property and became its owner in September 2015.
21. Had Sheehan been informed by DeMartino, Coldwell Banker, or KIP of their knowledge of encroachment from the Property onto the Abutting Property, Sheehan would not have closed on the purchase of the Property without modification of the purchase and sale to make KIP responsible for addressing and remedying the encroachment at KIP's expense prior to closing.
22. In December 2016, Sheehan first became aware of the encroachment by a letter from Rogers' attorney, which (i) informed Sheehan that, before the closing, Rogers told DeMartino, KIP's legal counsel, and KIP's manager, James Savko, that tiebacks for the retaining wall encroached onto the Abutting Property, and (ii) demanded an immediate plan for the removal of the encroaching tiebacks and the restoration of the Abutting Property.
23. Following the notice from Rogers' attorney, Sheehan confirmed the use and presence of the tiebacks and their encroachment on the Abutting Property with the installer of the retaining wall.
24. Because removal of the encroaching tiebacks and restoration of the Abutting Property would involve significant expense, require an engineered solution for replacement or revision of the retaining wall, and significantly de-value the Property, Sheehan acted to

mitigate damages by engaging the services of an attorney to identify and execute less expensive and more efficient alternatives to compliance with Rogers' demands.

25. For far less than the expense of removing the tiebacks and replacing or revising the retaining wall and the significant loss in the value of the Property by complying with Rogers' demands, Sheehan, with the assistance of his attorney, negotiated, paid for, and recorded an easement allowing the encroaching tiebacks to remain in place.
26. As a direct and proximate result of defendants' intentional and fraudulent concealment and misrepresentations as aforesaid, Sheehan sustained significant losses and damages, including those suffered in connection with mitigating damages.

COUNT I
(Fraudulent Misrepresentation)

27. Plaintiff reasserts and realleges Paragraphs 1 through 26 as if set forth fully herein.
28. Before closing, KIP's legal counsel and its manager knew that subsurface "tiebacks" supporting the Property's retaining wall were encroaching several feet onto the Abutting Property.
29. Notwithstanding said knowledge, and with the intent and purpose of inducing Sheehan to close on the purchase of the Property, KIP, by and through its manager, intentionally and falsely represented to Sheehan and others in sworn statements required of the seller as a condition of Sheehan's purchase of the Property, that KIP had no knowledge of any encroachment from the Property onto the Abutting Property.
30. KIP's intentional and fraudulent misrepresentation as aforesaid was of a fact material to Sheehan's purchase and KIP's sale of the Property.
31. Without knowledge of KIP's deception as aforesaid, Sheehan and others engaged on his behalf for the purpose of Sheehan's purchase of the Property, reasonably, justifiably, and

detrimentally relied on KIP's intentionally false representation in closing on Sheehan's purchase of the Property.

32. As a direct and proximate result of KIP's intentional and fraudulent misrepresentation as aforesaid, Sheehan sustained significant losses and damages, including losses suffered in connection with mitigating damages.

WHEREFORE, Plaintiff Sheehan demands judgment against Defendant KIP in an amount exceeding the jurisdictional minimum of the Court, plus statutory interest and costs and all further relief that is just and proper.

COUNT II
(Fraudulent Concealment)

33. Plaintiff reasserts and realleges Paragraphs 1 through 32 as if set forth fully herein.
34. Defendants KIP, DeMartino, and Coldwell Banker owed Sheehan a duty before closing to disclose to and inform Sheehan of their knowledge as aforesaid of tiebacks encroaching from the Property's retaining wall onto the Abutting Property.
35. In breach of said duty, before closing, said defendants intentionally and fraudulently concealed from Sheehan their knowledge as aforesaid of tiebacks encroaching from the Property's retaining wall onto the Abutting Property.
36. Defendants' intentional and fraudulent concealment was of a fact material to the purchase and sale of the Property and was made by them with the intent and purpose of inducing Sheehan to close on the purchase of the Property.
37. As a direct and proximate result of defendants' intentional and fraudulent concealment as aforesaid, Sheehan purchased the Property without knowledge of tiebacks encroaching from the Property's retaining wall onto the Abutting Property.

38. As a direct and proximate result of defendants' intentional and fraudulent concealment as aforesaid, Sheehan sustained significant losses and damages, including losses suffered in connection with mitigating damages.

WHEREFORE, Plaintiff Sheehan demands judgment against Defendants KIP, DeMartino, and Coldwell Banker in an amount exceeding the jurisdictional minimum of the Court, plus statutory interest and costs and all further relief that is just and proper.

COUNT III
(Violation of Massachusetts General Laws Ch. 93A)

39. Plaintiff reasserts and realleges Paragraphs 1 through 38 as if set forth fully herein.
40. The intentional, deceptive, fraudulent, and wrongful acts and conduct of Defendants KIP, DeMartino, and Coldwell Banker as aforesaid constitute violations of Massachusetts General Laws chapter 93A section 9.
41. Plaintiff has made a written demand for relief pursuant to Massachusetts General Laws chapter 93A, section 9(3) and Defendants KIP, DeMartino, and Coldwell Banker have failed to make a timely and adequate response, thereby entitling Plaintiff to judgment for all damages authorized by said statute.

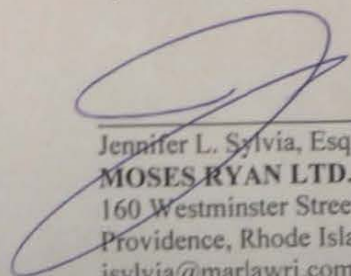
WHEREFORE, Plaintiff demands judgment against Defendants KIP, DeMartino, and Coldwell Banker for all allowable damages Massachusetts General Laws chapter 93A, section 9 *et. seq.* in an amount exceeding the jurisdictional minimum of the Court, and for said amount to be doubled or trebled, plus costs and reasonable attorneys' fees, and for interest, and such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demand a trial by jury on all issues and claims raised in this Complaint.

PLAINTIFF, ROBERT SHEEHAN,

By his attorneys,



Jennifer L. Sylvia, Esq. (BBO #67651)
MOSES RYAN LTD.
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Providence, Rhode Island 02903
jsylvia@marlawri.com
Tel: (401) 453-3600

DATED: November 14, 2018